Petition

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81-628

No. .....
IN THE

Supreme Court of the United States

October Term, 1981

KIMBERLY ANNE OLPIN, a minor, by her guardian *ad litem*, VIRGINIA LOUDEN,

Petitioner,

vs.

OWEN C. OLPIN,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

VIRGINIA LOUDEN,
Guardian *Ad Litem*,
Appearing In Propria Persona,
720 Machado Drive,
Venice, Calif. 90291,
(213) 399-4494.

Question Presented for Review.

Is it a denial of equal protection under the 14th Amendment of the Constitution of the United States of America for the state of California to establish laws that give a parent the right to protect his emotional need for familial relationships through hearings and enforcement procedures regarding visitation against his minor child, while denying any and all right to a child to sue to protect her emotional needs for familial relationships, leaving all children without legal redress for the wrong of emotional abandonment by one of their parents?

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vs.

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Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of California.

Petitioner respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of the State of California entitled in this action on June 24, 1981, denying hearing and review of the decision of the Court of Appeal of the State of California for the Second Appellate District, Division Four, filed April 30, 1981, affirming the judgment of the Superior Court of the State of California for the County of Los Angeles entered on July 31, 1979.

Opinions Below.

The Minute Order of July 31, 1979, of the Superior Court of the State of California for the County of Los Angeles dismissing the action upon demurrer is printed as Appendix A. The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four, af-

firming the dismissal of the Los Angeles Superior Court is printed as Appendix B. The order of the California Supreme Court denying hearing is printed as Appendix C.

Official Report of the Opinion of the California Court of Appeal in This Case:

Louden v. Olpin, App., 173 Cal.Rptr. 447 (1981).

Jurisdiction of United States Supreme Court.

(i) Date of Judgment and Time of Its Entry: Action Dismissed and dismissal entered by Superior Court (Court of first instance) July 31, 1979.

Date of California Court of Appeal Affirmance of Dismissal: April 30, 1981.

(ii) Petition to California Court of Appeal for Rehearing Denied on May 31, 1981.

(iii) Petition to California Supreme Court for Hearing denied on June 24, 1981.

(iv) Statutory Provision giving Jurisdiction to U.S. Supreme Court: 28 U.S.C. 1257(3)

Constitutional and Statutory Provisions Involved.

(1) UNITED STATES CONSTITUTION, EQUAL PROTECTION CLAUSE, 14TH AMENDMENT:

> Section 1. . . . All citizens born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) CALIFORNIA CIVIL CODE SECTION 4601:

> "Reasonable visitation rights shall be awarded to a parent unless it is shown that such visitation would be detrimental to the best interests of the child."

(3) CALIFORNIA CIVIL CODE SECTIONS 7006 and 7010. The texts of those sections are printed as Appendix D.

Statement of the Case.

Petitioner Kimberly Anne Olpin, age 5, sued for visitation with her father in May, 1979; the suit was demurred to by her father on the grounds that no child could sue a parent seeking a hearing to prove her own best interests regarding visitation with her father.

The demurrer was granted and Kimberly Anne Olpin's suit was dismissed on July 31, 1979.

The California Court of Appeal upheld the dismissal and the California Supreme Court denied Kimberly Anne Olpin's Petition for a Hearing on June 24, 1981, leaving the child without remedy for the wrong of emotional abandonment of her by her father.[1]

The federal question of a state establishing laws, hearings and procedures to protect a parent's emotional need for his inherent familial relationships with his child, while failing to provide equally for laws, hearings and procedures to protect the child's emotional need for her inherent familial relationships with her parent was raised by Petitioner child in the Los Angeles County Superior Court (court of first instance). [See Exhibit "A" (of Exhibits Lodged with Clerk), a copy of the Clerk's Transcript, pages 37 and 38, Response in Opposition to Demurrer].

The same federal question was again raised in the California Court of Appeal. [See Exhibit "B", Petitioner's

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[1]Petitioner's father, Owen C. Olpin, is a lawyer, member of the Bar of the United States Supreme Court, and member of the bars of Utah and California and Washington, D.C.

Opening Brief, pages 20 to 21, and see Exhibit "C", Petitioner's Petition for Rehearing, pages 6 to 7].

The federal question was raised in Petitioner's Petition for Hearing to the California Supreme Court in June, 1981. [See Exhibit "D", Petition for Hearing, pages 6 to 12].

The Los Angeles Superior Court did not give reasons for its granting of the demurrer; the California Court of Appeal was the only tribunal to issue a statement on the subject of equal protection, to wit:

> "It has not been interpreted, either by the U.S. Supreme Court or any other court, that the parents and the children have the *same* rights." [See Opinion in Appendix B, page 5)

After the issuance of the Court of Appeal decision and opinion on April 30, 1981, both the Court of Appeal and the California Supreme Court respectively denied rehearing and hearing.

This Petition for Writ of Certiorari was then filed.

ARGUMENT FOR ALLOWANCE OF WRIT.

The California opinion has decided an important question of federal law in a way that conflicts with the United States Constitution, and with the United States Supreme Court decisions involving the equal protection clause, as it gives no rational basis for the discrimination shown children in California's refusal to confer the same, or substantially the same, benefits of law as conferred upon parents with regard to visitation.

Parents have fought for and received ample protection for the use of legal remedies to protect their emotional needs for familial relationships and to protect their inherent right to a parent/child relationship with their own child.

In some instances children have definitely benefited from their parents' legal remedies; however, there are many children, including this petitioner, who have been emotionally abandoned by at least one of their parents while still receiving financial support. In the State of California in 1980 over 20% of the newborn children were born to "unmarried" parents according to California Public Health Dept. statistics; many of these children will receive financial support, but will be denied the emotional benefits of the parent/child relationship. Benefits which are virtually guaranteed to parents are denied to children by the California opinion in this case.

Children have at least the same, if not greater, need as adults have for legal remedies to protect their emotional need for familial relationships and to protect their inherent right to a parent/child relationship with their own parent.

A. Benefits Conferred Upon Adult Citizens of California.

The protection granted parents in California is that of (1) the right to sue and (2) the right to a hearing to prove that the best interests of the "child" are consistent with the parent's wish for visitation with the child.

These rights are based upon case law of *Exley v. Exley*, 101 Cal.App.2d 831 at 838, 226 P.2d 662 (1951) and statutory law, California Civil Code 4601, in the case of divorced parents, and upon the case law of *Strong v. Owens*, 91 Cal.App.2d 336, 205 P.2d 48 (1949) and *Griffith v. Gibson*, 73 Cal.App.3d 465, 142 Cal.Rptr. 176 (1977) and statutory law, California Civil Code 7006 and 7010(c) in the case of children born to unmarried parents.

The instant case, *Louden v. Olpin*, App., 173 Cal.Rptr. 447 at page 449 (1981) clarified in case law what has been occurring in fact in the Superior Courts of California — a parent has a legal right to compel a child to visit with him. See also case cited by California opinion, *Fernald v. Fernald*, 224 Pa.Super. 93, 302 A.2d 470 (1973).

The California courts have found no difficulty with providing remedies to parents, not children, and to enforcing a "duty" in a child to visit with his parent all in the "best" interests of the child, while at the same time, refusing to provide legal remedies to a child for redress of her grievance that her father has emotionally abandoned her.

B. Class Protected in Visitation Is That of the Family.

An examination of the "right" that is protected leads to the definition of the "class" deserving of protection by legal remedies. The "right" is an "inherent" right to familial relationships. Neither the emotional need for that familial relationship, nor the inherent right, is restricted only to adults or parents.

It is only too obvious that children need the familial relationship protections more than the parents, yet one member of the "family", *i.e.* the parent, has been given the right to hearings and procedures which are designed, in reality, to protect, not the best interests of the children, but the parent's emotional need for the child's company, *i.e.*,

the parent's "inherent" right to a parent/child relationship with his own child, but only when and if the parent wishes it.

According to the California opinion, the goal of the present California laws in visitation is solely "protection" of the parent's emotional needs and inherent right and if said protection happens to coincide with the child's needs, then the child will benefit; if the parent wishes to emotionally abandon a child, which may not coincide with the child's needs, there is no legal redress available for the child.

The parent/child relationship is an inherent, fundamental right of the parent. As this Court stated in *Stanley v. Illinois*, 405 U.S. 645 at 651 (1971):

> "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential.' *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), 'basic civil rights of man,' *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), and '[r]ights far more precious . . . than property rights,' *May v. Anderson*, 345 U.S. 528, 533 (1953)."

Since the "child" is *half* of that relationship, *a fortiori*, the child's rights to access to his parent is an inherent, fundamental, essential right of the child, deserving of the highest protections, including equal laws providing for redress from emotional abandonment.

C. The Denial to a Child of a Right to Legal Redress to Establish Visitation Has No Rational Basis.

The child is part of the "class" of family, whose relationships have been accorded protections; there is no rational basis to exclude children because of their age, from the right to a hearing to prove their own best interests.

In the case of *Berberian v. Petit*, (RI) 374 A.2d 791, 86 A.L.R.3d 468 (1977), the Supreme Court of Rhode Island discussed the classification by age as it relates to equal protection of the law.

When an adult is given the right to a driver's license, the right protected is logically one that some children cannot enjoy because their limitations in size, knowledge of the world, judgment, ability to maneuver a car, etc. Most states, however, logically give a child, age 16, the right to a driver's license upon a showing that he has reached an appropriate age to be able to enjoy the right properly. Before that age, there is a compelling state interest in protecting others from danger upon which the age limit is based.

There is no logical, compelling state interest to refuse a child a hearing and right to sue to determine her own best interests re visitation with her father because she is a mere "child".

The California Court of Appeal based its rationale on the fact that no court has ever done it. (See Opinion in Appendix B, page 5). Hardly a sufficient basis to deny redress.

Just as Illinois in *Stanley v. Illinois, supra*, made an illogical assumption that all unwed fathers are unfit fathers, allowing *no* father the right to prove he is different, the State courts of California have made a broad sweeping judgment that allows no child the right to seek redress of her grievance of emotional abandonment.

In the Illinois case, at least the father knew he was fighting to prove he was fit; in the instant case, petitioner Kimberly Anne Olpin only knows that she cannot sue her father and seek redress of his emotional abandonment of her because no child has ever done it before. Did the California court simply make a broad, unproven assumption that no child

could prove it would be in her best interests to have a father ordered to visit with her, or did the court make a broad, unproven assumption that Kimberly Anne Oplin was unfit and undeserving to have visitation with her prestigious father, member of O'Melveny & Meyers, member of the bar of the U.S. Supreme Court because he was not married to Kimberly's mother at the time of Kimberly's birth and visitation ordered between the two of them would be "distasteful."

Whatever the true rationale, not allowing *any* child the opportunity to seek redress of her grievances and not allowing a child the protections of hearings, laws and procedures re visitation, which are conferred upon adults, created an arbitrary, unreasonable distinction between members of the family.

This California opinion fails to accord substantially equal and uniform treatment to all persons similarly situated. Where members of a class are conferred benefits by the State, all members of the class must be given the same benefits.

All members of the immediate family (parent/child) must have the same access to courts, hearings and enforcement procedures with regard to a common emotional need as any one member of the family is granted.

California has established laws, rights and procedures for parents to enforce visitation within their family. California must extend those laws, rights and procedures to children in order to cease the emotional abandonment of children and in order to grant protection to children's familial relationships.

Kimberly Anne Olpin has a right to protect her emotional needs for her inherent familial relationships in the same

manner that her father has available to him should he wish to engage in same and the discretion of this Court must be used to affirm Kimberly's right.

Conclusion.

It is only fitting that this august judicial body allow this Writ, thereby using its discretion to assist every child in the United States in furthering their right to petition for legal redress of their grievance that a parent has emotionally abandoned them, and to specifically assist petitioner Kimberly Anne Olpin, daughter of a member of the Bar of the Supreme Court of the United States of America, in seeking legal redress of her grievance against her father, Owen Olpin, for his emotional abandonment of her.

Both equity and the equal protection clause of the United States Constitution give this child a right to a hearing to prove her own best interests. Petitioner respectfully seeks a Writ of Certiorari from the United States Supreme Court to the California Supreme Court to review the decision of the California Supreme Court and allow this child a hearing in which she will prove that it is in her best interests for the court to order visitation between she and her father.

Dated: September 22, 1981.

Respectfully submitted,

VIRGINIA M. LOUDEN,

Guardian Ad Litem on behalf of
Kimberly Anne Olpin, minor.

APPENDIX A.

Minute Order of Dismissal.

Superior Court of the State of California for the County of Los Angeles.

Loudin, Virginia M. (sic), Petitioner vs. Olpin Warren (sic), Defendant. Case Number D 996612 (Sealed by Order of Court).

Filed: July 31, 1979.

Good cause appearing therefor, the above entitled action is hereby dismissed under the provisions of Section 581.3 of the Code of Civil Procedure as to Defendant Olpin.

Dated: July 31, 1979.

/s/ Frances Rothschild
Judge
FRANCES ROTHSCHILD

APPENDIX B.

Opinion of the California Court of Appeal.

CERTIFIED FOR PUBLICATION.

In the Court of Appeal of the State of California, Second Appellate District, Division Four.

Kimberly Anne Louden, Plaintiff and Appellant, v. Owen C. Olpin, Defendant and Respondent. 2 Civ. No. 59401. (Super. Ct. No. D-996,612).

Filed: April 30, 1981.

APPEAL from a judgment (order of dismissal and an order) of the Superior Court, Los Angeles County. Francis Rothschild and Marvin A. Freeman, Judges. Affirmed.

Virginia M. Louden, as Guardian ad Litem, in propria persona, and James Griffin for Plaintiff and Appellant.

Jerome L. Goldberg, a Professional Corporation, Jerome L. Goldberg and Lesley A. Andrus for Defendant and Respondent.

Plaintiff appeals from a judgment (order of dismissal) and from a subsequent order. We affirm the judgment and the order.

Appellant, Kimberly Anne, by and through her mother as guardian ad litem, brought this action alleging that respondent (her father) has a duty to visit his child and has failed to do so. Respondent is the adjudicated father of appellant and has furnished monetary support to her since a paternity action was completed. Appellant's mother and father have never been married and appellant resides with her mother.

In the present action, the court, on its own motion and without notice, ordered the file in this action sealed.

The issues on appeal are whether a child can compel her noncustodial parent to visit with her and whether the judge lacked jurisdiction to designate the file confidential.

I

Appellant bases her argument that she can compel respondent to visit her on California Civil Code section 7000, et seq., (the Uniform Parentage Act). This act governs the parent-child relationships and the rights and duties flowing from the relationship including visitation rights. Section 7006 provides for the establishment of the parent-child custody relationship and section 7010 provides that the judgment may include ". . . any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child. . . ." Nowhere in the Uniform Parentage Act does it state that the child has the right to compel visitation privileges. The act has been interpreted to mean that the father can seek and obtain visitation rights with his child regardless of the marital status of the parents. Appellant relies on *Griffith v. Gibson* (1977) 73 Cal.App.3d 465 in which the court stated (at p. 471): "We therefore conclude the Uniform Parentage Act, section 7006 and 7010, in clear and unmistakable language, grants a right to the father here to bring an action to establish the child-parent relationship. . . ." *Griffith* involved an action in which the father of a child born out of wedlock wished to have visitation rights even though he was not a presumed father under the Civil Code. The court held that the father may have visitation rights regarding the child. The court stated that it was a right of the father; nowhere did they state that it was the right of the child. Appellant wishes us to extend

that holding to include a reciprocal right on the part of the child in that she may compel the noncustodial parent to visit. This we decline to do. There is neither statutory nor case law to support such a contention. Appellant relies on *Griffith v. Gibson, supra,* and Civil Code section 7000 in that the "child and parent relationship extend equally to" every child and to every parent regardless of the marital status of the parent. While this is true, it is inapplicable here. The court cannot compel a non-custodial parent on dissolution of a marriage to care for and love and visit with the child. The court can only compel the parent to provide monetary support. The children are not being treated differently based on the marital status of their parents; the court simply lacks the authority to compel this sort of behavior. In *Salas v. Cortez* (1979) 24 Cal.3d 22, a case which involved whether counsel must be appointed for an indigent defendant, the dissenting opinion stated (at p. 41): "It seems self-evident that the central issue in paternity suits is neither the establishment nor maintenance of the family unit nor the parent's bond with the child. What is at stake is money. . . . The state cannot, despite the majority's allusion to 'moral' obligations, order a man to act as a father; it can only designate him as such. . . ." Respondent has been designated as the father and he has duties and obligations to fulfill, but the fact remains that the court cannot order him to act as a father. While it is true that the state has a public policy interest in wanting parents and children to be together, it still remains that the court cannot order the family to stay together. Appellant argues that compelling the father to visit now will make him love the child and in time his visits will become voluntary. This may or may not occur, but in any event it is not up to the courts to make such a decision.

California creates in a parent a right and privilege to visit the child. This right is not, however, reciprocal. Appellant has cited many cases from California and foreign jurisdictions in which visitation has been compelled. Such compulsion was made on behalf of a parent, not a child. The noncustodial parent can compel a minor child to visit. This does not apply to a child who has reached majority, even if that child is still receiving support from the parent. See *Fernald v. Fernald*, 302 A.2d 470 (Pa. Super. 1973).) No case has been cited in which a parent has been ordered to visit his child. Appellant urges us to create a reciprocal right in children to order visitation and relies on *Stanley v. Illinois*, 405 U.S. 645 for that proposition. *Stanley* recognized the constitutional rights in the unwed father to his natural child. The court did not decide whether the right is reciprocal in the child and such a conclusion does not naturally flow. The Equal Protection clause of the U.S. Constitution, as interpreted, provides that unwed fathers and wed fathers must be treated equally. The same applies to children, regardless of the marital status of their parents. It has not been interpreted, either by the U.S. Supreme Court or any other court, that the parents and the children have the *same* rights. Appellant's reliance on *In re Gault* (1967) 387 U.S. 1 [87 S. Ct. 1428] is misplaced. *In re Gault* concerned a criminal defendant who was convicted without due process. This is not the case before us. The child here does not have the right to compel visitation by a parent; due process arguments are inapplicable.

For the foregoing reasons the superior court was correct in sustaining respondent's demurrer for failure to state a cause of action. We affirm that judgment.

II

The issue remaining is whether the judge in the paternity action lacked jurisdiction to order the file sealed. The judge in the paternity action filed a declaration of prejudice and

another judge was designated to hear the case. Several months later appellant filed her action to compel visitation. At that time the judge who previously declared prejudice in the paternity action ordered the file designated confidential. This action was not improper. The purpose of designating a file confidential is to protect the parties from the outside world knowing about the proceedings. This purpose was accomplished and it is irrelevant that he was previously disqualified for prejudice. Appellant has not been prejudiced by such action; she has been protected. Civil Code section 7014 provides in pertinent part: ". . . All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any public agency or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown." the whole purpose of this section is to protect the child and this purpose has been accomplished. There has been no showing of prejudice toward appellant in the entering of this order.

The order designating the file confidential is affirmed.

The judgment and order appealed from are affirmed.

CERTIFIED FOR PUBLICATION.

KINGSLEY, Acting P.J.

We concur:

WOODS, J.

EARLY, J.*

— —

*Assigned by the Chief Justice of California.

APPENDIX C.

Order of the California Supreme Court.

Clerk's Office, Supreme Court, 4250 State Building, San Francisco, California 94102.

June 24, 1981.

I have this day Filed Order HEARING DENIED.

In re 2/Civ. 59401, *Kimberly Anne Olpin vs. Owen Olpin*,

Respectfully,
Clerk

APPENDIX D.

California Civil Code Sections 7006 and 7010.

§7006. Who May Bring Action

(a) A child, the child's natural mother, or a man presumed to be his father under paragraph (1), (2), or (3) of subdivision (a) of Section 7004, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2), or (3) of subdivision (a) of Section 7004 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under paragraph (4) of subdivision (a) of Section 7004.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7004 or whose presumed father is deceased may be brought by the child or personal representative of the child, the State Department of Social Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement between an alleged or presumed father and the mother or child does not bar an action under this section.

(e) An action under this section may be brought before the birth of the child.

(f) The district attorney may also bring an action under this section in any case in which he believes that the interests of justice will be served thereby.

(1975 ch. 1244, 1978 ch. 429, oper. July 1, 1978)

§7010. Court Order Final — New Birth Certificate

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8, of Division 9 of the Health and Safety Code.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(d) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts.

(1975 ch. 1244)

Opposition

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Petitioner,

vs.

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Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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vs.

OWEN C. OLPIN,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Question Presented for Review.

Does the Fourteenth Amendment give a child the right to force her parent to visit with the child, against the parent's will?

ARGUMENT.

This case does not present any basis for granting a writ of certiorari. The decision of the California Court of Appeal is not in conflict with any other state or federal decision, nor does this case present any substantial question of federal law which need be decided by this Court.

This case was initiated by Petitioner in conjunction with a separate paternity action. In that action Respondent was adjudged to be Petitioner's father, and child support was awarded. Respondent has been complying in all respects with his financial obligations, and this petition does not involve any question of Respondent's monetary obligations or his performance of those obligations. The only issue involved here is whether, in addition to financial support, the child's mother can force the father (a married man with his own family of four children) to visit the child.

In hopes of eliciting this Court's interest, Petitioner attempts to make an equal protection argument. She contends that a parent has a legal right to visit a child, and therefore (although not specifically stated) a child must have an equivalent right to force a parent to visit and force a parent to satisfy his or her emotional needs.

In fashioning this argument Petitioner relies on a statute (California Civil Code §7010) which *permits* the noncustodial parent to visit with a child; but the crucial point here is that there is nothing in this statute, in any other statute or in any judicial decision, which *forces* an unwilling parent to visit a child.

There is no statutory authority for Petitioner's assertion that a parent has an absolute right to visit a child. In fact, in California a parent may be denied the right to visit his child if there is a showing that visitation would be detrimental to the best interests of the child [California Civil

Code §4601]. Moreover, it should be noted that this right ceases when the child reaches majority. Even if the child is still receiving support from the parent, a parent does not have the right to compel an unwilling child over 18 to visit his parent. [see *Fernald v. Fernald*, 224 Pa.Super. 93, 302 A.2d 470 (1973), cited by Petitioner]. If an adult child cannot be forced to visit a parent, there is no legal or constitutional basis for forcing an adult parent to visit his child.

Even if one took Petitioner's assertion as true, that is, assuming a parent has an absolute right to visit his child, the equal protection clause would not necessarily give the child a corresponding right. As the California Court of Appeal noted:

> "It has not been interpreted, either by the United States Supreme Court or any other court, that the parents and the children have the *same* rights." *Louden v. Olpin*, 118 Cal.App.3d 565, 569 (1981) [Emphasis by the court.]

Indeed, the parent-child relationship creates, and sensibly so, a right in the parent which by its nature cannot be reciprocal — that is, the right to custody. This is a right of the custodial parent [see *Odell v. Lutz*, 78 Cal.App.2d 104, 106 (1947)] embracing the right to make decisions regarding the control, education and health of the child [*Bings v. San Francisco*, 41 Cal.2d 608, 617 (1953)] and the duty to rear and discipline the child [*Emery v. Emery*, 45 Cal.2d 421, 429-430 (1955)]. A non-custodial parent's right to visit his child is intended to provide him with an opportunity for continuing this involvement in directing the child's development.

A parent's common law right of custody and control cannot be converted into a minor child's right of custody and control of a parent. The notion of compelling an unwilling parent to visit with the child is wholly foreign to

our legal system. Such an order would be an intolerable infringement of the father's personal liberty and an unwarranted interference in his own family life. In addition, such an order would put the courts in the morass of attempting to regulate the quality of the time the parent spends with the child.

Thus, it is entirely reasonable for the California courts to conclude in the circumstances of this case that an adult parent cannot be forced against his will to visit a child.

Conclusion.

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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